

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of the Correctional Fees Owed by Richard J. Carrillo	FINDINGS OF FACT, CONCLUSIONS AND ORDER
-----------------------------------------------------------------------	--------------------------------------------------------

This matter was heard by telephone conference call before Administrative Law Judge Kathleen D. Sheehy on November 24, 2008. The OAH record closed at the conclusion of the hearing.

Krista Guinn Fink, Associate Legal Counsel, Minnesota Department of Corrections, 1450 Energy Park Drive, Suite 200, St. Paul, Minnesota 55108, appeared on behalf of the Department of Corrections (Department).

Richard J. Carrillo, #202811, MCF-STW, 970 Pickett Street North, Bayport, MN 55003-1490, appeared for himself without counsel.

STATEMENT OF ISSUE

May the Department collect a supervision fee of \$80 from Mr. Carrillo through the Minnesota Revenue Recapture Program?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Mr. Carrillo was convicted of and incarcerated for the offense of felony drive-by shooting.

2. On June 17, 2008, Mr. Carrillo was placed on intensive supervised release (ISR). On June 18, 2008, Mr. Carrillo met with his ISR agent, who provided him with a written notice that a supervision fee of \$80 had been assessed as of the date of his release and that he would be allowed to pay the fee at the rate of \$10 per month. The notice further provided:

Please be aware that even though the imposition of this fee is not a court mandated condition of your probation agreement, it is still a legal obligation and it is expected that you will make every attempt to pay it. If you fail to pay the fees and remain current with your

payments, you will not advance to the next phase of your program and you will not be considered for early discharge from your probation. Fees not paid at the end of a year, or at the end of your sentence, will be submitted to the Department of Revenue for revenue recapture.¹

3. Mr. Carrillo paid no supervision fees while he was on ISR. On August 25, 2008, he was returned to prison for violation of the conditions of his release.²

4. The Department subsequently notified Mr. Carrillo of its intent to collect the supervision fee through the Revenue Recapture Program and of his right to request a hearing. By letter received September 29, 2008, Mr. Carrillo requested a contested case hearing.³

5. On October 15, 2008, the Commissioner of Corrections issued a Notice of and Order for Hearing.

Based on the Findings of Fact, and for the reasons explained in the attached Memorandum, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. §§ 241.272, 270A.08 and 270A.09.

2. Notice of the hearing was proper and the Department has fulfilled all procedural requirements.

3. Richard Carrillo owes to the Department of Corrections \$80 for a supervision fee.

4. The \$80 supervision fee is a "correctional fee" within the meaning of Minn. Stat. § 241.272. Under Minn. Stat. § 241.272, subd. 3(a), the Commissioner of Corrections may impose and collect fees from individuals on supervised release at any time while the offender is under sentence or after the sentence has been discharged. Under subdivision 3(b) of that statute, the Commissioner may use any available civil means of debt collection to collect a correctional fee.

5. The Minnesota Revenue Recapture Act authorizes State agencies such as the Department of Corrections to collect debts owed to it by filing a claim with the Minnesota Department of Revenue. The Department of Revenue may collect amounts due to the Department of Corrections by setting off the amount

¹ Ex. A.

² Testimony of Michael Schommer.

³ Ex. C.

of such debt from refunds due to debtors. Refunds include individual income tax refunds, political contribution refunds, property tax credits or refunds, and lottery prizes of \$600 or more.⁴

6. It is appropriate for the Department of Revenue to collect the correctional fee of \$80 from Richard Carrillo through the revenue recapture provisions of Minn. Stat. Chapter 270A.

Based on the Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS ORDERED that the Department of Corrections may proceed with its request to the Department of Revenue to collect the \$80 due from Mr. Carrillo for a supervised release fee through the Minnesota Revenue Recapture Program.

Dated: November 26, 2008

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

NOTICE

This Order is the final decision in this matter pursuant to Minn. Stat. § 270A.09, subd. 3. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.68.

MEMORANDUM

Mr. Carrillo argues that because the Department did not notify him at the time the \$80 supervision fee was assessed that the Department would seek to collect it in the event that he was returned to prison, he should not be required to pay the fee. Before July 1, 2008, the Department had a written policy that if an offender's supervised release was revoked and the offender was committed to a correctional facility, the Department would not take action to pursue unpaid supervision fees or submit them to the recapture process.⁵ Effective July 1, 2008, the Department's policy changed. The written policy now provides that unpaid fees "will be immediately submitted for revenue recapture upon an

⁴ See Minn. Stat. §§ 270A.03, subd. 7, and 349A.08, subd. 8.

⁵ Ex. E at 2.

offender's revocation of probation and execution of sentence.”⁶ The issue is whether this change of policy with regard to collection of the supervision fee affects the Department's ability to use the recapture process to collect the fee from Mr. Carrillo.

Minn. Stat. § 241.272, subd. 3, permits the Commissioner of Corrections to impose and collect correctional fees from individuals on probation and supervised release “at any time while the offender is under sentence or after the sentence has been discharged.” The statute therefore authorizes the Commissioner to impose and collect the fee, either while the offender is serving a sentence or after the sentence is discharged. For some period of time, the Commissioner made the policy decision to forego collection efforts if the offender were returned to a correctional facility; now, the Commissioner has decided to collect those fees immediately. Both of those policy decisions are consistent with the authority granted to the Commissioner under the statute. And the Department is not obligated to formally adopt rules to effectuate these policy decisions.⁷ Mr. Carrillo was notified of the Department's intent to collect unpaid fees through the revenue recapture process. The Administrative Law Judge concludes that there is no legal basis for disallowing use of the recapture process simply because the collections policy has changed.

K.D.S.

⁶ Ex. D at 2.

⁷ See Minn. Stat. § 14.03, subd. 3(b)(1) (2006) (rules of the Commissioner of Corrections relating to the release, placement, term, and supervision of inmates serving a supervised release or conditional release term are not subject to rulemaking under the Administrative Procedure Act).